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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS ERNESTO CALDERA,

Defendant and Appellant.

E061548

(Super.Ct.No. INF1201819)

OPINION

APPEAL from the Superior Court of Riverside County. Dale R. Wells, Judge.

Affirmed with directions.

Susan S. Bauguess, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On June 2, 2014, an amended information charged defendant and appellant Carlos Caldera with possession for sale of methamphetamine under Health and Safety Code section 11378 (count 1); possession for sale of marijuana for sale under Health and Safety Code section 11359 (count 2); possession of a controlled substance for sale under Health and Safety Code section 11351 (counts 3-6 methadone, oxycodone, hydrocodone, and morphine, respectively); being an addicted felon in possession of a firearm under Penal Code section 29800, subdivision (a)(1) (counts 8-12); possession of an assault weapon under Penal Code section 30605, subdivision (a)(1) (count 13); possession of a short-barreled shotgun under Penal Code section 33215 (count 14); being a prohibited person in possession of ammunition under Penal Code section 30305, subdivision (a)(1) (count 15); and child abuse under Penal Code section 273a, subdivision (a) (count 16).

The information also alleged that defendant had a prior conviction of possession of a controlled substance for sale. The information accordingly alleged one drug-related prior conviction enhancement under Health and Safety Code section 11370.2, subdivision (c), as to count 1; and under subdivision (a) as to counts 3 through 6. As to counts 1, and 3 through 6, the information additionally alleged that defendant was personally armed with a firearm during the commission of the offenses under Penal Code section 12022, subdivision (c). The information further alleged that defendant had five prior prison terms. (Pen. Code, § 667.5, subd. (b).)

On July 15, 2014, pursuant to a plea agreement, defendant pled guilty to counts 1 through 5, and no contest to count 16. Defendant also admitted all the alleged enhancements and priors. In accordance with the negotiated plea agreement, the trial court imposed the following sentence: As to count 3, the principal count, the upper term of four years, plus three years for the prior possession enhancement and the upper term of five years for the arming enhancement; and concurrent low terms on all the remaining counts. The court also stayed the prior possession enhancements (counts 1, 4-6), imposed concurrent low-term sentences for the arming enhancements, imposed one year each for three of the five prison prior enhancements, and stayed the sentences on the remaining two prison priors. Defendant was sentenced to an aggregate term of 15 years in state prison. The court also awarded defendant 730 days of actual credit and 730 days of conduct credit, for a total of 1,460 days of presentence custody credits.

Defendant filed a timely notice of appeal.

B. FACTUAL HISTORY¹

On July 15, 2012, a Riverside County sheriff's deputy pulled defendant over for a traffic violation. Defendant was in the driver's seat; there was a woman and a young child in the car with him. After defendant told the deputy he was on parole, the deputy searched the car and found a glass pipe that was coated with a white crystalline substance, two rifles, and three bindles of marijuana. Subsequently, police searched

¹ Because defendant pled guilty, and the underlying facts are not pertinent to the issues presented on appeal, the statement of facts will be summarized from the preliminary hearing.

defendant's home and found methamphetamine, prescription pills, two rifles, a shotgun, ammunition, scales, and suspected drug packaging.

DISCUSSION

A. THE TRIAL COURT ERRED IN STAYING DEFENDANT'S SENTENCE ON THE ENHANCEMENTS

At sentencing, in addition to the imposed terms, the trial court stayed the prior possession conviction enhancements attached to count 1 (Health & Saf. Code, § 11370.2, subd. (c)), and counts 4 through 6 (Health & Saf. Code, § 11370.2, subd. (a)). The court also stayed two of the five prison prior enhancements. (Pen. Code, § 667.5, subd. (b).)

Defendant contends, and the People agree, that the trial court erred in staying, rather than striking, the prior possession and prison prior enhancements. The trial court should have imposed or struck, not stayed, the enhancements.

Health and Safety Code section 11370.2, subdivisions (a) and (c), and Penal Code section 667.5, subdivision (b), mandate that the trial court shall impose an additional term as provided in the statute, where a defendant has committed a specified prior offense. The statutes mandate imposition of the enhancement term for each qualifying prior conviction. These mandatory enhancements, generally identified by the use of statutory language such as "shall," must be imposed. (See *People v. Langston* (2004) 33 Cal.4th 1237, 1241; *People v. Haykel* (2002) 96 Cal.App.4th 146, 151.)

Accordingly, courts have held that enhancements ““may not be stayed; to do so is an illegal sentence.”” (*People v. Haykel, supra*, 96 Cal.App.4th at p. 151; *People v. Langston, supra*, 33 Cal.4th at p. 1241; [“trial court may not stay the one-year enhancement, which is mandatory unless stricken”].) The trial court, however, has discretion under Penal Code section 1385 to strike an enhancement or the punishment for an enhancement in the interest of justice. (Pen. Code, § 1385, subds. (a) & (c)(1).) The court, therefore, has two options with regard to sentencing on an enhancement: impose the punishment or strike it. (*Langston*, at p. 1241.)

In this case, the trial court stayed one enhancement under Health and Safety Code section 11370.2, subdivision (c), three enhancements under Health and Safety Code section 11370.2, subdivision (a), and two prison prior enhancements. However, only two enhancements were authorized under Health and Safety Code section 11370.2—one each under subdivision (a) and (c). (*People v. Edwards* (2011) 195 Cal.App.4th 1051, 1057-1059 [“Health and Safety Code section 11370.2 enhancements are status enhancements, which can be imposed only once, as part of the aggregate sentence. However[,] multiple enhancements can be imposed for the same prior convictions, if there are current multiple counts of conviction as to which different subdivisions of Health and Safety Code section 11370.2 apply”].) Hence, the enhancements under Health and Safety Code section 11370.2, subdivision (a), should have been stricken. Absent the plea agreement, the trial court would have been required to impose one enhancement for each qualifying offense under subdivisions (a) and (c). Because the trial court may only either impose or strike them, the stayed terms for those enhancements were also unauthorized.

A remand, however, is unnecessary because the parties are bound by the terms of the plea agreement. At sentencing, the trial court stated that it believed that the negotiated 15-year sentence was “an appropriate disposition in this case.” Therefore, it sentenced defendant accordingly. The record shows the trial court intended defendant’s maximum sentence to be 15 years in accordance with the terms of the plea agreement. Imposition of the stayed terms would increase the sentence beyond the terms of the plea agreement. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 [reviewing courts may order the correction of an abstract of judgment].)

B. DEFENDANT WAS AWARDED THE PROPER AMOUNT OF PRECUSTODY CREDITS PURSUANT TO HIS PLEA AGREEMENT

Defendant contends that his presentence custody credits were improperly calculated. He argues that based on his arrest date, he is entitled to an additional day each of actual credit and conduct credit, for a total of two additional days.

“[P]lea bargaining is an integral component of the criminal justice system and essential to the expeditious and fair administration of our courts.” (*In re Alvernaz* (1992) 2 Cal.4th 924, 933.) “A negotiated plea agreement is a form of contract, and it is interpreted according to general contract principles. [Citations.] The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. [Citation.] If contractual language is clear and explicit, it governs.” (*People v. Shelton* (2006) 37 Cal.4th 759, 767.) The parties to the agreement are assumed to have read and understood the writing before it is presented to the trial court for approval. (*People v. Toscano* (2004) 124 Cal.App.4th 340, 344.) “Acceptance of the agreement binds the

court and the parties to the agreement.” (*People v. Segura* (2008) 44 Cal.4th 921, 930.)

““As the People are held strictly to the terms of the plea bargain, the accused also must be held to his agreement.”” (*People v. Ames* (1989) 213 Cal.App.3d 1214, quoting *People v. Masten* (1982) 137 Cal.App.3d 579, 586.)

In this case, defendant pled guilty to 15 charges and no contest to one charge under the terms of the plea agreement. The plea agreement explicitly stated that in exchange for pleading to the 16 charged offenses, defendant would receive a 15-year sentence and that his “credit for time served w[ould] be” two years (730 days) of actual credits and two years of conduct credits (730 days), for a total of four years (1,460) of presentence custody credits. Defendant signed the plea agreement form. At sentencing, the trial court asked defendant if he had “go[ne] over,” understood, and agreed to the terms of the plea agreement, to which defendant replied, “Yes.”

Therefore, based on the record, defendant knew the exact amount of custody credits he would receive as part of the plea agreement. Defendant is therefore estopped from now challenging them, including the amount of his custody credits. (*People v. Hester* (2000) 22 Cal.4th 290, 293-294; *People v. Beebe* (1989) 216 Cal.App.3d 927, 935 [a defendant “is estopped from avoiding the plea agreement which he voluntarily accepted on the day of trial”].) This holds true even if defendant can establish that he was entitled to more credits under the statutory scheme. (*Beebe*, at p. 932; *People v. Johnson* (2002) 28 Cal.4th 1050, 1053-1055 [a defendant can knowingly waive his entitlement to custody credits].)

Because defendant accepted a plea agreement for a reduced sentence and agreed to receive a total of 1,460 presentence custody credits, he “ha[s] received the benefit of [his] bargain [and] should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process.” (*People v. Hester, supra*, 22 Cal.4th at p. 295.) By accepting the award and failing to object at sentencing, defendant has forfeited his right to challenge the two extra days of presentence custody credits on appeal. (*People v. Myers* (1999) 69 Cal.App.4th 305, 312 [defendant who, through counsel, stipulated to the amount of presentence custody credits forfeited any alleged error in calculation].)

Notwithstanding, in his reply brief, defendant contends that he is not estopped because he was not aware that he was entitled to the additional two days. He claims, “it can only be assumed [defendant] relied on either the court, the prosecution and/or his own counsel’s calculation. However, that calculation was inaccurate.” As noted above, defendant signed the plea agreement form with the agreed-upon precustody credits. When the court asked defendant if he had “go[ne] over,” understood, and agreed to the terms of the agreement, defendant replied, “Yes.”

Based on the above, we find that the trial court awarded the proper amount of presentence custody credits under the terms of the plea agreement.

DISPOSITION

The trial court is directed to amend the abstract of judgment by striking the previously stayed prior possession and prison prior enhancement terms. The trial court is further directed to prepare an amended abstract of judgment and to forward a certified

copy of the amended abstract to the Department of Corrections and Rehabilitation. (Pen. Code, §§ 1213, 1216.) In all other respects, the judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

KING
J.